

Regular Session, 2010

SENATE BILL NO. 777

BY SENATOR CLAITOR

PUBLIC CONTRACTS. Prohibits design-build and related types of contracts from being entered into after June 30, 2010. (7/1/10)

AN ACT

To amend and reenact R.S. 29:42(A), the introductory paragraph of R.S. 29:42(I), R.S. 38:2225.2.1(A)(1), R.S. 48:250.2(A) and 2084.13(E), R.S. 49:214.5.2(A)(7), and 214.6.2(A) and (D), and to enact R.S. 48:250.3(I), relative to design-build and related contracts; to prohibit such contracts from being entered into after a certain date; and to provide for related matters.

Be it enacted by the Legislature of Louisiana:

Section 1. R.S. 29:42(A) and the introductory paragraph of R.S. 29:42(I) are hereby amended and reenacted to read as follows:

§42. Design-build contracts; hurricane-impacted areas

A.(1) Notwithstanding any law to the contrary, **until the time provided for in Paragraph (2) of this Subsection,** the adjutant general and the Military Department, with the approval of the commissioner of administration, may utilize the design-build method on any infrastructure construction project in an area where a gubernatorial declared state of emergency exists due to Hurricane Katrina or Rita declared pursuant to the provisions of R.S. 29:721 et seq., including those areas where infrastructure is adversely impacted by permanent personnel or unit

relocation.

(2) No design-build contract may be entered into pursuant to the provisions of this Section after June 30, 2010.

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I. **For contracts authorized by this Section,** upon request by the adjutant general, the commissioner of administration is authorized to waive or suspend the provisions of R.S. 38:2181 et seq., R.S. 39:1481 et seq., and R.S. 39:1551 et seq. When procurements are made **for such contracts** which would otherwise be subject to the provisions of R.S. 38:2181 et seq., R.S. 39:1481 et seq., or R.S. 39:1551 et seq., procedures and requirements set forth in R.S. 38:2212(D)(2) shall be complied with. Additionally, the Military Department shall at a minimum:

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Section 2. R.S. 38:2225.2.1(A)(1) is hereby amended and reenacted to read as follows:

§2225.2.1. Design-build contracts; authorized use by certain public entities in areas damaged by Hurricane Katrina, Hurricane Rita, or both

A.(1)(a) Notwithstanding any law to the contrary, **until the time provided for in Subparagraph (b) of this Paragraph,** the following public entities may utilize the design-build method in the construction or repair of any public building or structure which has been destroyed or damaged by Hurricane Katrina, Hurricane Rita, or both or any public building or structure to be constructed or repaired to meet a homeland security or criminal justice need pursuant to a hurricane recovery plan: the division of administration, the Recovery School District, the city of New Orleans, sheriffs, housing authorities, and parish governments in Calcasieu, Cameron, Jefferson, Orleans, Plaquemines, St. Bernard, St. Tammany, and Vermilion parishes and the Port of New Orleans.

(b) No design-build contract may be entered into pursuant to the provisions of this Section after June 30, 2010.

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Section 3. R.S. 48:250.2(A) and 2084.13(E) are hereby amended and reenacted and R.S. 48:250.3(I) is hereby enacted to read as follows:

§250.2. Design-build contracts; administration

A.(1) Notwithstanding any law to the contrary or the requirements of this Part, until the time provided for in Paragraph (2) of this Subsection, if the secretary determines it is in the best interest of the taxpayers, the Department of Transportation and Development, with approval of the House and Senate transportation, highways, and public works committees, may formulate, develop, and implement a program to combine the design and construction phases of a transportation facility or facilities, including but not limited to highways, interchanges, or bridges into a single contract.

(2) No design-build contract may be entered into pursuant to the provisions of this Section after June 30, 2010.

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§250.3. Design-build contracts; qualifications of design-build entities; public announcement procedures; letters of interest; selection of short list; bid proposals by competitors; qualifications evaluation committee; proposal review committee; selection and process of award

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I. The provisions of this Section shall only be applicable to design-build contracts entered into pursuant to the provisions of R.S. 48:250.2 prior to July 1, 2010.

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§2084.13. Public-private partnership projects; procurement

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E. Contracts for the construction of qualifying transportation facilities ~~may be constructed utilizing~~ which utilize design-build may be entered into until July 1, 2010. However, qualifying transportation facilities may be constructed utilizing ~~or~~ other innovative project delivery methods.

Section 4. R.S. 49:214.5.2(A)(7) and 214.6.2(A) and (D) are hereby amended and reenacted to read as follows:

§214.5.2. Functions and responsibilities; Coastal Protection and Restoration

Authority

A. The authority shall:

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(7) **Subject to the restrictions provided for in R.S. 49:214.6.2(A),** have the power and authority to enter into any contract with the federal government or any federal agency or any political subdivision of the state or private individual for the study, planning, engineering, design, construction, operation, maintenance, repair, rehabilitation, or replacement of any integrated coastal protection project and to this end, may contract for the acceptance of any grant of money upon the terms and conditions, including any requirement of matching the grants in whole or part, which may be necessary.

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§214.6.2. Functions and responsibilities; coastal activities

A.~~(1)~~ The office shall administer the programs of the Coastal Protection and Restoration Authority. The executive director may use his contracting authority, or the contracting authority of any state department or agency, to implement the provisions of this Chapter. Such contracting authority shall include construction management at risk, **and** operation and maintenance~~;~~ **Until the time provided for in Paragraph (2) of this Subsection, such contracting authority shall also include** design-build, design-build-operate and maintain, and design-build-finance-operate and maintain, or any combination of design, construction, finance, and services for operation and maintenance of an integrated coastal protection project, where appropriate. The Office of Coastal Protection and Restoration shall have the authority to execute and implement said contracts entered into under the authority of R.S. 49:214.5.2(A)(7).

(2) No contract for design-build, design-build-operate and maintain,

design-build-finance-operate and maintain, or any combination of design, construction, finance, and services for operation and maintenance of a project may be entered into pursuant to the provisions of this Section after June 30, 2010.

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D. The office may:

(1) **Subject to the limitations provided for in Subsection A of this Section,**

negotiate and execute contracts, upon such terms as the office may agree, for legal, financial, consulting, or other professional services or personal services necessary to the conduct of the office. In addition, the office may enter into contracts for engineering and construction services or agreements with the federal government, local governing authorities, political subdivisions, or with other public or private entities for the administration, implementation, or enforcement of integrated coastal protection projects, programs, or activities as directed by the Coastal Protection and Restoration Authority.

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Section 5. This Act shall become effective on July 1, 2010; if vetoed by the governor and subsequently approved by the legislature, this Act shall become effective on July 1, 2010, or on the day following such approval by the legislature, whichever is later.

The original instrument and the following digest, which constitutes no part of the legislative instrument, were prepared by Riley Boudreaux.

DIGEST

Proposed law prohibits the following types of design-build contracts from being entered into after June 30, 2010:

1. Design-build contracts of the adjutant general and the Military Department for infrastructure construction projects in an area where a gubernatorial declared state of emergency exists due to hurricane Katrina or Rita, including those areas where infrastructure is adversely impacted by permanent personnel or unit relocation. [R.S. 29:42(A)]
2. Design-build contracts of the division of administration, the Recovery School District, the city of New Orleans, sheriffs, housing authorities, and parish governments in Calcasieu, Cameron, Jefferson, Orleans, Plaquemines, St. Bernard, St. Tammany, and Vermilion parishes and the Port of New Orleans for the construction or repair of any public building or structure destroyed or damaged by

- Hurricane Katrina or Hurricane Rita, or for any public building or structure to be constructed or repaired to meet a homeland security or criminal justice need pursuant to a hurricane recovery plan. [R.S. 38:2225.2.1]
3. Design-build contracts of DOTD for transportation facilities, including highways, interchanges, or bridges, and specifically for the new Mississippi River Bridge at St. Francisville and other projects or combined program of projects selected by the secretary of DOTD and approved by the House and Senate transportation, highways, and public works committees. [R.S. 48:250.2]
 4. Design-build contracts for public-private partnership projects. [R.S. 48:2084.13]
 5. Contracts for projects of the Coastal Protection and Restoration Authority for design-build, design-build-operate and maintain, design-build-finance-operate and maintain, or any combination of design, construction, finance, and services for operation and maintenance of an integrated coastal protection project. [R.S. 49:214.5.2]

Effective July 1, 2010.

(Amends R.S. 29:42(A), R.S. 29:42(I)(intro para), R.S. 38:2225.2.1(A)(1), R.S. 48:250.2(A) and 2084.13(E), R.S. 49:214.5.2(A)(7), and 214.6.2(A) and (D); adds R.S. 48:250.3(I))